

High Court of Madras
JALALPUR
DIVISION Bench
26 JUN 1990
344
Reg. No.
ONER Receipt Clerk
High Court, Jalalpur

APPEAL OF PRISONER

No. 4016/52 Name अधीर राम
Father's name अज्ञादिज घोषी साकिन उमर वाराणासी दुर्गर
Residence अलिपुरा (म.प्र.) Age 42 वर्ष
Sentenced to आजीवन कारावास On 21/5/96
Under section 302 भा.पू.वि. by H. अलिखित सग. न्यायाधीश दुर्गर (म.प्र.)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the case for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not be heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

- 1 Date of Application for copy of Judgement 12/6/96
- 2 Date on which copy received 12/6/96
- 3 Date on which Appeal sent 6/9.6
- 4 Whether the prisoner wishes to be represented or not - Yes / No

No. 4010/52 Name કાલીપ રામ આર અશાદિજી બેલી
 Confined in કુડીપ Jail રામપુર (મ.જ.)
 No. 546 (૫૦૧) Dated 1996 21/6/96

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ ^{ଆଇ.ଜି.ମ.ସି. ଡି.ଏ. ଶ୍ରୀ.ମାଳ (ମ.ସ.)}
together with a copy of judgement or order passed in the case for favour of trans-
mission to the proper Appellate Court.

२१ ल० न०, निर्वाचन, ५२ लिपि
५३, ५४, ५५, २६६/१५

For 
Superintendent
...केन्द्रीय विद्यालय, रायपुर (म.प्र.)...

Date of receipt in... office W/1/1961
Date of receipt record to accompany the
Memo of Appeal to the Appellate court

No. Dated 199.....

Forwarded to the

Date of receipt in Appellate Court

(P. T. O.)

आदेश पत्रक

मामला क्रमांक

G.Opp. 1266/96

सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>DIVISION BENCH:</u> <u>HON'BLE MR. L.C.BHADOO &</u> <u>HON'BLE MR. DHIRENDRA MISHRA, JJ</u> <u>03.03.2006</u> Miss Minu Banerjee, Advocate for the appellant. Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. M.P.S. Bhatia & Mr. Akhil Mishra, Panel Lawyers for the State. Oral judgment dictated on Dais. <u>Per L.C. Bhadoo, J</u> By this appeal under Section 374(2) of the Cr.P.C. appellant Agharuram has questioned the legality & correctness of judgment of conviction and order of sentence dated 31.5.1996 passed by learned 2nd Additional Sessions Judge, Durg in S.T.No.266/95 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for committing murder of his wife namely Devki Bai convicted him under Section 302 of the I.P.C and sentenced to undergo imprisonment for life. The prosecution case, in brief, is that Brijbhandas gave merg intimation (Ex.P-1) in the Police Station, Gurur to the effect that in the intervening night of 11th & 12th April, 1994 cries of Devki Bai, wife of accused Agharuram, were heard from the house of accused, door of the house was closed from the inside, people of the vicinity knocked the door but nobody ~~he~~ opened the door and after some time cries of Devki Bai silenced. At about 2.00 a.m. in the night accused Agharuram went to the house of Gokul and informed him that his wife is suffering from stomach pain, on which Gokul came to the accused's house and saw that wife of accused was lying flat and she was already dead. Villagers collected at the house of accused and they suspected the death of Devki Bai, therefore,	

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	Kotwar Brijbhandas lodged the report. Based on this mereg intimation, F.I.R. (Ex.P-2) was registered by the Station House Officer, Police Station Gurur. The Investigating Officer left for the scene of occurrence and after giving notice (Ex.P-3) to the Panchas he prepared the Panchnama (Ex.P-4) of the body of deceased Devki Bai. He also took into possession one golden nose-ring and broken pieces of glass bangles under Ex.P-5, two golden earrings and one silver clip under Ex.P-6. Body of deceased Devki Bai was sent for postmortem examination to Primary Health Centre, Gurur, where Dr. S.C. Godheja (PW-4) conducted the postmortem, prepared the postmortem report (Ex.P-7) and opined that the cause of death was asphyxia due to pressure over throat. Site plan (Ex.P-10) was prepared by the Investigating Officer. After completion of investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Durg, who in turn committed the case to learned Sessions Judge, Durg from where learned 2nd Additional Sessions Judge, Durg received the case on transfer for trial. The prosecution in order to establish the offence against the accused/appellant examined eight witnesses. On the other hand, learned Additional Sessions Judge recorded the statement of accused/appellant under Section 313 of the Cr.P.C. in which he either pleaded innocence or denied the prosecution evidence and stated that he has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused convicted & sentenced the accused in the manner as mentioned in Para 1 of this judgment.	

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	We have heard Miss Binu Banerjee, Advocate for accused/appellant and Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Akhil Mishra, Panel Lawyers for the State/ respondent. Homicidal death of deceased Devki Bai is not in dispute. As far as involvement of the accused/appellant in crime in question is concerned, learned counsel for the accused/appellant argued that daughters and sons of the accused, who were at the residence in the fateful night, have not been examined. None of the witnesses have stated that they saw the accused in the house, or coming to the house or leaving the house. The prosecution has failed to prove the motive. She placed reliance on the judgment the Hon'ble Apex Court in the matter of Vadugu Chanti Babu Versus State of Andhra Pradesh reported in A.N.J. Supreme Court 2003 (1) 18 as also on the judgment of High Court of M.P. in the matter of Mohan V State of Madhya Pradesh reported in Acquitted Cases 2005 (1) 162 (M.P.). On the other hand, learned Additional Public Prosecutor for the State supported the impugned judgment of the trial Court. Having heard learned counsel for the parties, we have perused the evidence, record as well as judgment of the trial court. As far as the motive is concerned, it is settled law that, if the prosecution ~~does not~~ ^{failed to} establish the motive ^{about it} and there is evidence to connect the accused with the crime, the accused can be convicted based on the evidence. As far as second argument advanced by learned counsel for the accused/appellant that no body had seen the accused in the house or coming to the house or leaving the house is concerned, PW-1 Mukundram has stated in his evidence that his house is near the house of accused, in the fateful night at about 10.30 p.m. he went for sleep and within 10-15	

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	minutes he heard the screams which were coming from the side of accused's house and Baraturam was calling accused Agaharu to open the door. On hearing this, he also came out of the house and reached in front of the house of accused on which he heard that wife of accused was saying "save-save". Door was bolted from inside and even on knocking door was not opened by the accused. After some time cries of Devki Bai silenced. At about 3.00 a.m. he again heard the screams of the daughter of accused, he came out of the house and saw that the Village Sarpanch Rajuram, Gokul & his son, one Ramauram and other villagers were standing in front of the house of accused. Sarpanch Rajuram informed him that Devki Bai has died, on which he told the Sarpanch that in the night she was raising cries, how she has died. Thereafter, he asked Ramauram that let us go inside and see how Devki Bai died. After going inside, we saw that Devki Bai was lying in the cot, her body was covered with the bed sheet, her nose-ring was lying on the ground and there were scratches on the ground. They came out and asked the Sarpanch to lodge the report in the police station and thereafter, the Kotwar lodged the report. In the cross-examination, this witness has stated that there are three sons and two daughters of the accused and in the fateful night, elder son of the accused was at the residence. PW-2 Brijbhandas has stated in his evidence that in the fateful night on being called by Rajulal he went to the house of accused and saw that wife of accused was lying on the cot, on seeing this he said that report is to be lodged in the police station and thereafter, he along with accused went to the police station and lodged the report Ex.P-1. He further stated in the cross-examination that he went along with accused to lodge the report and body was watched by Rajuram, Ramau & Buddhu. PW-3 Rajuram, Sarpanch of the village, has stated in his evidence that accused came to his house and informed him that on account of	

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	stomach pain his wife has died, on this he asked the accused to call the villagers and also the Kotwar. On reaching the house of accused they saw that wife of accused was lying dead in the corridor and pieces of broken glass bangles were lying there, therefore, villagers raised suspicion and it was decided to lodge the report and as such, accused, Kotwar and elder brother-in-law of the accused were sent to the police station for lodging the report. He has further stated that on enquiry from the accused he informed him that his wife has died on account of stomach pain. Accused informed the same thing to the villagers also. In Para-4 of evidence this witness has stated that broken glass bangles and one golden nose-ring were lying on the ground, which were taken into possession by the police under Ex.P-5. PW-4 Dr. S.C. Godheja, who conducted the postmortem examination on the body of deceased Devki Bai, has stated that there was redness on the vocal cord of deceased, which was in the size of 2"x1", on dissection he found that tissues & muscles were injured, clotted blood was present and there was no other injury. In the windpipe and throat there was swelling, both lungs were congested, there was injuries on the sternum mystoid muscle and the doctor has further stated that Devki Bai died on account of asphyxia due to pressing of neck. PW-5 Baratu has also stated that on hearing the screams of a lady from side of the house of accused he along with Goverdhan went to that side, they knocked the door but door was closed from the inside and after some time screams were silenced. In view of the above evidence, it is established that the accused himself went to the house of Sarpanch Rajuram (PW-3) and informed him that his wife Devki Bai has died on account of stomach pain. Even the accused informed the villagers same thing and thereby he gave false information to the villagers. Whereas, as per medical evidence of doctor (PW-4) who conducted the postmortem on the body of deceased, there was	

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	redness on the vocal cord of the deceased in the size of 2"x1" and on dissection he found that tissues & muscles were injured, clotted blood was present, there was no other injury and cause of death of the deceased was asphyxia due to pressing of neck. The above medical evidence is suggestive ^h that the death of Devki Bai was homicidal in nature. Moreover, the ^{h broken} bangles of deceased were found on the ground and there were abrasion over her elbows and this fact shows that there was some struggle inside the house. The neighbours heard the screams of Devki Bai and even after knocking of the door, same was not opened from the inside. Therefore, all these factors suggest that the accused gave false information to the Sarpanch that his wife died on account of stomach pain. Moreover, in the cross-examination of these witnesses the accused has not been able to raise any defence that he was not present in the house, somebody else has committed the crime, whereas, he took the false defence that his wife died on account of stomach pain. Accordingly, all these circumstances are suggestive ^{1 of the fact h} of that the accused was the only author of crime in question and there was no possibility of involvement of any third person in the crime in question. So far as the judgments cited by learned counsel for the accused/appellant are concerned, the case of Vadugu Chanti Babu (supra) is distinguishable on facts. In that case the Court ~~has~~ reached to the conclusion that there was no evidence to show that anybody other than PW-1 saw the appellant either coming to the house or leaving the house or near about the house, whereas, in the present case accused himself went to the Sarpanch of the village, gave false information and moreover, there is no suggestion in the cross-examination of any of the witnesses that accused was not at the residence when the crime in question was committed. Similarly, the case of Mohan (supra) is also distinguishable on facts. In that	

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	case the Court reached to the conclusion that there is no circumstantial or direct evidence to connect the accused with the crime in question, whereas, in the present case from the evidence, as discussed above, the involvement of the accused in the crime is clearly established. As far as the non-examination of Puneet Ram, son of accused is concerned, it is settled law that merely on the basis of non-examination of any witness the prosecution case cannot be disbelieved when there is other evidence based on which the prosecution has succeeded in establishing the crime against the accused. In the present case from the evidence, as discussed above, the prosecution has been able to establish the involvement of the accused in the crime in question, therefore, non-examination of Puneet Ram is immaterial. In the result, we do not find any illegality or infirmity in the judgment of the trial court, therefore, the appeal being devoid of merit is liable to be dismissed and accordingly, it is dismissed.	
	Sd/- L.C. BHADOO Judge	Sd/- Dhirendra Mishra Judge

Roshan/-

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24/08